



## UNITED STATES PATENT AND TRADEMARK OFFICE

10/10  
UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/006,069	12/06/2001	Edward Rebar	019496-005830US	2374
20350	7590	03/09/2004	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834				YAEN, CHRISTOPHER H
		ART UNIT		PAPER NUMBER
		1642		

DATE MAILED: 03/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/006,069	REBAR ET AL.
	Examiner	Art Unit
	Christopher H Yaen	1642

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 04 November 2003.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-100 is/are pending in the application.  
 4a) Of the above claim(s) 1-20,23,25-85 and 90-98 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 21,22,24,86-89 and 100 is/are rejected.  
 7) Claim(s) 99 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet</u> .

Continuation of Attachment(s) 6). Other: Remail--IDS's filed 3/25/2002, 4/8/2002, 10/21/2002, and 1/21/2003 .

### **DETAILED ACTION**

1. The amendment filed 11/04/2003 is acknowledged and entered into the record.

Accordingly, no claims are canceled and claims 99 and 100 are newly added.

#### ***Election/Restrictions***

2. Applicant states that claims 21-24, 86-89, and 99-100 have been amended so as to read on elected subject matter, wherein the amendments no longer read on a single specified sequence in table 3 and 4. Because independent claim 21 has been amended in such a way as to broaden the scope beyond those sequences found in table 3 and 4, for purposes of examination the claim will be searched without any need of a particular sequence. However, claims 23 is still withdrawn from consideration because as originally presented, the purified sequence of claim 21-22 has been examined to the extent that the nucleic acid sequence consisted of three zinc fingers. Therefore, since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1-20, 23, 25-85, and 90-98 are withdrawn from consideration as being directed to a non-elected invention. See 37 C.F.R. § 1.142(b) and M.P.E.P. § 821.03.

3. Claims 21-22, 24, 86-89, and 99-100 are examined on the merits.

#### ***Information Disclosure Statement***

4. The information disclosure statements filed 3/25/2002, 4/8/2002, 10/21/2002, and 1/21/2003 are herein attached as requested by the applicant.

***New Arguments***

***Claim Rejections - 35 USC § 102***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Claims 21,22,24 and 100 are rejected under 35 U.S.C. 102(b) as being anticipated by Sif *et al* (J. of Virol. 1994 Nov; 68(11):7131-7138). Sif *et al* teach a purified cDNA molecule that encodes the transcription factor Sp1, which is known in the art to bind the VEGF gene (as evidenced by Ryuto *et al* (J. Biol. Chem. 1996;271(45):28220—28228, **IDS KS**), wherein it is taught that VEGF gene contains Sp1 binding motifs – see abstract). It is further known in the art that the transcription factor Sp1 consists of three zinc finger domains (evidenced by Berg JM (PNAS USA 1992 Dec;89:11109-11110, **IDS EU**) – see page 11109 2<sup>nd</sup> paragraph). Sif *et al* also teach a fusion of the Sp1 gene with a GST domain, wherein the GST domain regulates the binding of the said Sp1 protein to glutathione. And finally, Sif *et al* also disclose a vector that comprises a nucleic acid sequence which encodes a Sp1 protein (see page 7132).

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 21,22,24, 86-89, and 100 are rejected under 35 U.S.C. 102(e) as being anticipated by Case *et al* (US Patent 6,599,692). Case *et al* disclose a nucleic acid sequence that encodes a zinc finger protein (see column 11, lines 27-44), wherein the zinc finger protein has at least three fingers (see column 11, line 31) and is capable of targeting a VEGF gene (see column 8, lines 52-55). It is also disclosed that the nucleic acid sequence can be part of a “chimeric protein”, wherein a zinc finger protein is linked to a regulatory domain (see column 8, lines 14-15). Case *et al* further disclose that the zinc finger protein can be used for in vivo purposes (see column 27, lines 10-15) wherein the composition comprises viral expression vectors selected from retroviral, adenoviral and adeno-associated viral vectors (see column 27, lines 65-67).

**All other rejections are withdrawn in view of the applicant's amendments and arguments thereto as set forth in a paper filed 1/04/2003.**

### **Conclusion**

9. No claim is allowed.
10. Claim 99 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher H Yaen whose telephone number is 571-272-0838. The examiner can normally be reached on Monday-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler can be reached on 571-272-0871. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher Yaen  
Art Unit 1642  
March 1, 2004



**GARY NICKOL**  
**PRIMARY EXAMINER**